

Town of Union

PLAN COMMISSION MEETING

Minutes of June 24, 2010

The Town of Union Plan Commission regular meeting was called to order by Chairman Alvin Francis at 7:00 p.m. on Thursday, June 24, 2010 at the Eager Free Public Library, 39 W. Main St., Evansville, WI. Members in attendance included Chairman Francis, Vice-Chairman Doug Zweizig, Doug Lee, Kim Gruebling, Dave Pestor, Eric Larsen, and Renee Exum. Also in attendance were Town Supervisors George Franklin and Don Krajeck, Clerk Regina Ylvisaker, and Town Attorneys Matt Dregne and Lis Howard.

Approve May 27, 2010 Plan Commission Minutes

Alvin Francis noted that the public comment made by Tom Davis with regard to the APPI gravel pit conditional use permit should be changed to indicate that Davis' insurance company will no longer cover damage to their home from blowing sand and dust.

Motion to approve the minutes of the May 27, 2010 Plan Commission meeting as corrected made by Kim Gruebling. Second by Eric Larsen. Motion carried by unanimous voice vote.

Public Comment (10 minutes max/issue)

Harold Abey noted that the City of Evansville has installed the first blade on their wind turbine.

Brian & Heather Halvensleben, were in attendance to voice their concerns and complaints about noise and outside bands at Geneo's Bar. An outside band was at the bar two weeks ago and more are scheduled for this Friday and Saturday. The resulting noise nuisance is affecting their quality of life and that of their one year old child. They have contacted the City of Evansville but were told the business is outside the City limits and therefore outside their control. Attorney Matt Dregne explained that the property's zoning and alcohol license will need to be reviewed for compliance issues, and this issue has not yet been addressed with the Board. The issue will be on the agenda for the July 8, 2010 Board meeting.

Ryan George was in attendance, representing resident Barb George, who would like to separate off buildings from her home on Highway 14. Stated that Barb is looking for recommendations on what options she has for dividing the parcel and what would be acceptable to the Plan Commission. She would like to split off 10 acres, including the house and buildings which take up roughly five acres. There are unfarmed acres south along Stewart Road and north on Highway 14 that would go with the buildings, constituting the 10 acre total. The parcel is currently 74 acres. The Commission questioned how many animals the existing facilities are built to hold; George stated possibly 50 animal units, as there is some pasture land available. Doug Lee noted that the Commission's recent past practice has been to deed restrict remaining land in these types of splits, in the interest of preserving farmland. Kim Gruebling's view was that they would be asking to separate off buildings from what is currently a working farm; the parcel could be used as a working farm as it is now and sold that way, why the need to split off buildings? Francis noted that if they separated off over 10 acres it would be zoned A2, and there would be no restriction on the number of animal units allowed on the parcel. Francis believes having A2 zoning would be an important consideration. George asked if the fact that there was an area of poor quality soil on the remaining ~64 acre parcel that could be used for a home site, would that have any effect on the deed restriction issue? Gruebling felt it would be

an argument in their favor, but recommended that if that plan is what they ultimately have in mind they should come in initially with that plan presented instead of changing course later.

Public Hearing: Review and action on extension of existing Conditional Use Permit held by Candace Phelps, 13222 W. East Union Rd, Evansville, WI 53536 to operate a mining operation on her 138 acre parcel (6-20-97) located south of State Hwy 59 on the west side of N. East Union Road, Fire #10607. The gravel pit is currently operated by Aggregate Produced Products, Inc.

Public hearing opened at 7:20 p.m.

Francis noted that there were extensive public comments made at last month's public hearing. He also noted citizen complaints received regarding blowing sand, dust, and noise. Francis requested that any comments made present new facts or views and not restate those presented last month. No comments made.

Public hearing closed at 7:22 p.m.

Dave Moore, attorney representing APPI, stated he did not attend last month's meeting but has reviewed the minutes and understands the questions that have been raised and the terms of the existing CUP. Moore stated he is operating under the assumption that the primary question before the Commission is the owners compliance with the current CUP issued, and therefore he will address his comments along those lines. Moore distributed best management practices for fugitive dust control as drafted by APPI:

- paved driveway 700 ft entering & exiting property, paved additional 75 ft behind scale house;
- both roadways in pit consist of ¾" clear stone on top of road gravel;
- speed limit signs posted in pit at 15 mph;
- water roadways under dry windy conditions as necessary;
- stockpiles of material consist of no silt or clay that would normally cause dust;
- stone piles are clear (washed) rock;
- store stock piles in center of pit;
- trucks will be advised of secured load regulations in accordance with the Wisconsin Division of State Patrol;
- all trucks will be loaded to the best of our ability for safety and to prevent any omission of fugitive dust.

Per Moore, the permit issued by the DNR and referenced by the Plan Commission was issued for the portable mechanical crushing plant located on property, which is not always located at the pit and operated on a limited basis. Brian Barbieur of the DNR is in charge of checking on compliance with the permit when the plant is being used. Francis stated that he saw three recommendations on dust control in Barbieur's report; the important point is that there is not to be any sand blowing off the property under both the DNR regulations and the Town's regulations. Moore clarified that the DNR permit is applicable to the portable crushing machine only and not the pit itself, and when the machine is being used the regulations are in force from DNR. Lee noted that the Town's CUP doesn't specify the portable crushing machine vs. pit in it's regulations; additionally, it is the pit owner's responsibility to be sure trucks are tarped and to advise the drivers as such, and it is his right as the pit owner to refuse to let the truck return if they do not tarp their loads when leaving. Zweizig asked the applicants what their next step would be if they were to advise the trucks to tarp their loads and they did not comply; Moore stated that his clients can't stop the trucks once they are on the road. Lee felt that the response

of the pit owner in such situations should be clear: if the truck does not comply with the pit operator's request to tarp, the truck is not let back in to the pit as he is not in compliance with the pit rules. Moore stated that best management practices are not defined under the CUP, and the applicant's duty is to do what he can and what is reasonable to comply with the CUP.

Moore distributed a form drafted by APPI to be distributed to all trucking companies regarding tarping statutes and potential consequences from DNR or law enforcement for non-compliance. Dregne hypothesized that with regard to tarps on trucks, if the Town accepts that the pit owner is unable to control what trucks do once they leave the site, is it possible that the trucks and how they operate and their impacts on the neighbors may not be under the pit owner's control? The group felt that the trucks are only on the road with products because of the pit's location and as a result are affecting the neighborhood, and this should be taken in to account when reviewing pit operation. Moore agrees that cooperating with neighbors is important.

Renee Exum stated her desire would be to have the issue of "covering materials" addressed in the language related to tarping in the best management practices, as it is specifically stated as such in the state statutes. Also doesn't see reducing stockpiles outlined as a best management practice, and would like that included in the language as well. Gruebling inquired if the pit has reduced the size of the stockpiles yet, as it was addressed last month. Frank stated he removed one pile, and reduced the height of another by ten feet; the piles referred to by Barbieur in his report have all been addressed. After reviewing recently dated pictures, Gruebling agreed that the piles had been reduced. Putting piles in the pit may also be a solution, but then they will need more open land. Measurement of berms is a related issue. Frank noted that he was considering putting recycled asphalt on the remaining roadways in the pit when it becomes available from the County, to help reduce dust. Eric Larsen stated that he understands there is a cycle of production and selling of products, and as a result piles will get larger and then smaller. He believes that because of this constant cycle of change there needs to be a better plan and practice in place for pile height maintenance that everyone agrees will be followed or the group will be meeting again with problems relating to pile height and related issues. Lee suggested placing sprinklers on the tops of piles in drier areas which helps stop excess dust.

Regarding item 7 on the best management practices provided by APPI, Dregne asked if stockpiles would be stored in the center of the pit no matter what; yes, per Tami Frank. Dregne asked for clarification as the best management practice states "when possible store feed stock piles in lower pit" and is qualified by the statement "if area is not being reclaimed and if it does not cause financial burden." Dregne feels that certain items need to be defined in language that everyone agrees on, including "feed stock," "stock pile," "center of pit," "lower pit," and "reclamation" and "financial burden" as stated in item 7. Frank explained that "feed stock" references material after it has been taken out of the bank and is a general size. The material then proceeds through the wash plant, where five different products are produced. The largest piles at the pit are concrete sand. By storing product in the center of pit, they have located it as far away from the road as they dare without reconfiguring the whole property. Airport sand is only made in the fall and used in winter, and there is only a small quantity on site now. It must be tarped and kept dry per the Dane County Airport, the only customer they sell the airport sand to. Exum questioned how the airport sand became airborne as stated in Barbieur's report; Frank stated the tarp over the sand was torn at that time. Larsen agrees that there is significantly less airport sand on hand now than in the fall/winter.

Overall, Dregne feels that issues surrounding interpretation and definition of statements and wording is a problem; he would like to see a site plan detailing how the owners propose to

address the outstanding issues, and including: clear definitions of the materials produced and stored on site, information on how the walls surrounding piles will be constructed and their height, and identifying where the materials will be stored on the site. It is to everyone's benefit to be as clear as possible. Tami Frank would welcome the Commission members to visit the site, to help put things in perspective and identify locations within the site.

Francis asked the Franks what their plan would be when they visually see sand/dust leaving the property; Frank stated that they shut down May 20, as they had materials blowing off conveyor. Additionally they have been watering, and keeping a log of watering. Francis asked if they are required to report dust leaving the property to the DNR; Tami Frank clarified that the permit only relates to the crushing plant, which has not been on site since April.

Regarding noise issues, the Town's Building Inspector took noise readings along the roadway surrounding the pit, and his readings indicated that noise was not outside the parameters outlined within the Town's zoning ordinance. The portion of the Town's zoning ordinance dealing with noise is complicated and further testing is expensive; at this time the Board has decided not to continue with conducting a study. Larsen doesn't believe the roadway was an appropriate location for noise measurements to be taken. Moore believes that the ordinance relates to the noise leaving the property. Gruebling feels that the noise section of the zoning ordinance needs to be on the agenda for a future meeting for further discussion; he distributed copies of the City of Madison's ordinance for review.

Motion to leave noise out of consideration of the current issue, and add discussion of the noise ordinance to the August Plan Commission agenda for review and recommendations of changes made by Kim Gruebling. Second by Eric Larsen. Lee clarified that back up alarms on equipment and hours of operation are set by the current CUP and OSHA. Dregne clarified that the intent of the motion was to remove noise as a consideration when reviewing the CUP for renewal, including both past performance and issues and going forward; Gruebling agreed that this was the intent but clarified that the pit has to comply with the noise ordinance but the ordinance needs to be reviewed. The issue will be removed from the current discussion regarding extension of the permit, but will not necessarily be removed from conditions set forth in future CUPs. Larsen wanted clarification that compliance with the noise ordinance was the only issue off the table, as he wants to discuss the hours of operation and related noise issues; this is correct.

Lis Howard reviewed the two approaches to handling the permit as outlined at the last Plan Commission meeting, and recommended using the more conservative of the two approaches. Since the last meeting, legal counsel has done more analysis, and feels the Commission can simply follow the process as laid out in the CUP, and can apply standards in the ordinance as if they were granting a new CUP, basically taking a "fresh look" at the issue. At this point, there are three options available: extend the permit as is, extend the permit with additional or modified conditions, or deny an extension of the permit. The Town's ordinance currently does not include a revocation procedure; if the Commission would like the CUP to be held to a revocation procedure in the future they should include language stating such in the permit, which Howard provided for review and consideration. Howard noted the importance of recording all the documents used in making the Commission's decision, as it would be important if legal action related to the issue were ever taken.

Howard entered into the record the following exhibits:

- Exhibit 1: Conditional Use Permit issued by Town of Union to Candace Phelps on June 5, 2008
- Exhibit 2: Letter from Tom & Connie Davis dated July 21, 2009
- Exhibit 3: List of complaints from Davis' letter dated July 21, 2009 with reviews of each complaint by Building Inspector Bob Fahey dated August 25, 2009
- Exhibit 4: Letter from John & Emily Winburn dated September 24, 2009
- Exhibit 5: Letter to Brett & Tami Frank RE: APPI Conditional Use Permit issues dated February 9, 2010
- Exhibit 6: Email from Bob Fahey RE: APPI berm height dated June 24, 2010
- Exhibit 7: Minutes from May 27, 2010 Town of Union Plan Commission meeting as amended.

Gruebling inquired if it was feasible for the Town to extend the permit for a period of 90 days to consider the proposed actions to correct violations presented by APPI. Dregne felt that the Commission could incorporate the revocation process language presented by legal counsel and issue a regular, 1 or 2 year permit and deal with issues as they come up with the revocation process, or issue the permit for a limited period of time for the reasons suggested, which should be explained i.e. to see if the operation can be run in compliance with the Town's conditions, etc. Francis suggested extending the permit with the current information for a period of one year. Lee asked if Francis' recommendation includes the revocation process language as presented by legal counsel; it does. Larsen questioned if an end date for the permit would be necessary with the revocation language; Dregne stated that the revocation language can be used either with or without an end date on the permit. The current CUP states "permit is to be reviewed by the Plan Commission at a public hearing to be held at June 2010 Plan Commission meeting." It is unclear if it expires at that time or is simply reviewed regardless of complaints or compliance issues.

The following documents were entered into the record:

- Exhibit 8: Letter from John & Emily Winburn dated May 19, 2010
- Exhibit 9: Letter from John & Emily Winburn dated October 9, 2009
- Exhibit 10: Complaint SC-COM-10-19681 received by Brian Barbieur on May 5, 2010 regarding fugitive dust emissions from APPI pit
- Exhibit 11: General Construction Permit-Nonmetallic Mineral Processing Plant issued to Brett Frank/APPI with attached letter dated February 2, 2010

The Plan Commission allowed the public in attendance to submit documents for identification as exhibits. The following were received and identified:

- Exhibit 12: From John & Emily Winburn: "Notations on our calendar regarding APPI mining activity" beginning 4/16/2009 and ending 6/24/2010
- Exhibit 13: Photographs of stockpile heights dated 6/3/2010 and 6/21/2010 provided by Kim Gruebling
- Exhibit 14: Photographs of pit operations, including aerial photographs and trucks leaving pit, dated 2009 and 2010, provided by Tom & Connie Davis and John & Emily Winburn
- Exhibit 15: Best Management Practices – Fugitive Dust Control as drafted by Tami Frank, APPI with a revision date of 6/1/2010 submitted by Dave Moore
- (No Exhibit 16)

- Exhibit 17: Letter from Andrew Baker, Conservation Specialist from Rock County Land Conservation Department to Alvin Francis, Town of Union Plan Commission Chair dated June 11, 2010
- Exhibit 18: Notice provided to trucking companies regarding State statutes and secured load regulations from APPI
- Exhibit 19: Mine Safety Health Administration (MSHA) standards and APPI efforts to meet standards and address other concerns raised
- Exhibit 20: Log of dates APPI driveway was reviewed for cleanliness and gravel/debris buildup, beginning 6/1/2010 and ending 6/24/2010 provided by Kim Gruebling.

Larsen brought up the issue of hours of operation listed in the permit and their interpretation by the Board; he wants to be sure that industrial equipment can't be operated outside of the hours of operation, and feels the Board interpretation is not specific enough to address this possibility. Dregne distributed a copy of a CUP issued to a gravel pit by Dane County, which addresses the hours of operation issue differently and may address some issues the Town is facing.

Regarding the issue of berms, as stated in the CUP it sounds like the berms have to be located the entire distance along the road outside of the pit; Larsen thinks this is unreasonable and the language should be made more clear. Additionally, some berms still are not high enough. Dregne noted the concerns expressed recently about how to measure the berm height. Gruebling thinks a detailed drawing provided by the pit owners would be helpful in addressing this issue; he also doesn't think a berm north of the driveway is appropriate given safety issues. Per Gruebling, this is an argument for a 90 day extension of the permit, to allow the applicants to get information together to address concerns. They need to know exactly what the Commission wants in a site plan, not an aerial photo. The plan should be a detailed drawing with measurements, berm locations, etc. Dregne suggested the applicants present a proposed site plan and the Commission can decide if it feels it is an appropriate plan to address their concerns. Zweizig noted that resident Beckwith stated at the last Plan Commission meeting his request to have a berm put in at the end of the driveway, and feels that issue should be addressed as well, at least with a narrative of its feasibility. Dregne suggests including a narrative to go with the site plan to explain items and terms, how they might change in different situations, and how they would be addressed as they change. The applicants should be concerned with convincing the Commission that the dust and noise issues will be handled with their proposed practices.

Moore would like the noise ordinance issues and the other permit concerns all handled together, and would like to have time to address the possible changes to the noise ordinance. Gruebling thinks the noise ordinance will take at least 6 months to be finalized, and all other current issues with the permit should be addressed now.

Dregne would like Moore to stipulate on the record that the terms discussed tonight are agreeable to his clients, including the revocation language and waiving his right to challenge. Dregne would like to preserve the status quo for limited period of time, suspend the proceeding, and revisit with further information in the future; however the Commission would also like to attach the additional condition of revocation, and more clearly define the hours of operation in the CUP at this time.

Moore stated his clients have no problem with preserving the status quo – Dregne asked if it would be acceptable to Moore and his clients if, when the end of the extension period is reached, at that time the applicants can challenge any conditions going forward, but wouldn't

challenge them during the extension period. Those terms were acceptable to Moore and his clients.

Larsen stated "hours of operation" should apply to washing, crushing, grinding, and loading as defined in the Board's interpretation with the addition of trucking and stripping. Tami Frank stated that the performance of maintenance was a prior issue, specifically having contractors or others come in after hours of operation to perform work. The Board had excluded maintenance, office work and vehicles returning to the site in their interpretation of "operation," and Frank would suggest that as discussed previously the pit owners contact the Board members to notify them of any work being performed outside of the normal operating hours. To address this issue, Larsen would like to add "exception: public projects and maintenance which specify operation beyond the established operating schedule will be presented to, and approved by, a member of the Town Board for approval prior to beginning work" to the CUP language. It was agreed that an extension of 120 days would be acceptable to all parties.

Counsel for APPI indicated that APPI are stipulating to suspend the current proceeding until the October 2010 meeting of the Plan Commission, and stipulate that the existing CUP and conditions therein will continue with two exceptions, one being the addition of the revocation paragraph provided by Town counsel and the other being the modification of the definition of "hours of operation" as outlined by Larsen. The applicant has stipulated that it will not object to the incorporation of those two conditions during the suspension period. The Plan Commission can revisit the issue of whether to extend the permit at its October 2010 meeting based on the record created thus far and at the October 2010 meeting. The applicants are not agreeing to waive any legal right to challenge, they are only agreeing not to challenge during the suspension period.

Motion to extend the Conditional Use Permit held by Candace Phelps, 13222 W. East Union Rd, Evansville, WI 53536 to operate a mining operation on her 138 acre parcel (6-20-97) located south of State Hwy 59 on the west side of N. East Union Road, Fire #10607; currently operated by Aggregate Produced Products, Inc. until the October 2010 Plan Commission meeting per the stipulation made by Eric Larsen. Second by Kim Gruebling.

Roll call: Alvin Francis – Yes; Doug Zweizig – Yes; Renee Exum – Yes; Eric Larsen – Yes; Dave Pestor – Yes; Kim Gruebling – Yes; Doug Lee – Yes. Motion carried 7-0.

Public Hearing: Review and action on request made by Donald Maas, 7337 N. Pleasant Prairie Rd, Evansville, WI 53536 for a conditional use permit. The applicant is requesting a permit for a wind measurement tower to be located on parcel #6-20-247, a 40 acre parcel located in the NE ¼, NW ¼ of Section 30, to collect information for wind turbine feasibility in accordance with the Town of Union Zoning Ordinance section 17.03. The Tower has been installed under a previous Conditional Use Permit.

A copy of the lease agreement between Maas and Acciona was not provided by Gary Haultaufderheide; he stated he was of the impression that it would be requested by legal counsel. Commission members reminded Haultaufderheide that he was specifically asked to provide a copy of the lease at the last Plan Commission meeting and it was his responsibility to do so.

Dregne updated the Commission on recent developments; he had sent a letter to Chip Reading of Acciona related to the issue of the forfeiture, and did not ask for a copy of the lease in that letter as he was not aware he should be requesting a copy. Reading called Dregne today and stated that Acciona assumed ownership of the tower some time ago, and no one at the

company was tracking the MET tower and expiration of the CUP and the oversight was an "honest mistake" on the part of Acciona. Readling agreed that there should be a consequence for their mistake, but felt that the amount requested by the Town was too high. Readling will contact Dregne by next Thursday, July 1, with a proposal. Dregne's advice to the Commission at this point is to separate the forfeiture issue from the current conditional use permit application. Dregne sees no problem in the Commission requesting a copy of the lease agreement between Maas and Acciona if it will help them make a decision on the conditional use permit application they are considering tonight.

Public hearing opened at 9:13 p.m.

Haultaufderheide stated that he spoke to corporate people at Acciona and they stated it was not their practice to release information such as leases; he did not notify the Commission or Clerk of this until tonight. Lee stated that not providing the lease even though it was specifically requested doesn't demonstrate good business practices; additionally, they had stated originally that the tower would only be up for one year and now they are requesting an extension. Haultaufderheide explained that when they requested the initial permit, they stated that it would take two or three years to gather information. Dave Pestor asked if the lease expired in 12 months along with the conditional use permit; this is not necessarily the case but the Commission does not know as they don't have a copy of the lease. Dregne stated that currently the tower is up in violation of the Town's zoning regulations; the Commission needs to act on the application before them and consider the Town's zoning ordinance when issuing the permit and request whatever information they deem necessary to make a decision. Lee asked if the safety issues, including faded paint, balls on guy wires, had been addressed; Haultaufderheide stated that flags had been put on the wires. Zweizig stated he had looked at the tower last month, and at that time there was no visible paint on the tower and the flags were gone. Haultaufderheide stated that Acciona is responsible for maintenance of the tower; Zweizig stated they are not the ones requesting the permit, which brings up the issue of who is responsible for complying with the CUP? Haultaufderheide stated that according to the lease Acciona is responsible for compliance. Zweizig asked if the tower is now painted and balls installed on the wires to bring it into compliance with the permit; Haultaufderheide stated it is not. Zweizig feels that the current paint on the tower is too hard to see to be safe. Tonto Abey stated that the paint is visible from his kitchen window. Don Maas stated that the paint is visible from the corner of Pleasant Prairie and County C, and regarding the flags on guy wires, they are installed but wrapped around the wires. Haultaufderheide stated that he has spoken with two aviation instructors in the Madison area, who told him that planes should be flying 500' above buildings, and the tower is only 197' tall, well below the 500' recommended height.

Zweizig feels that Acciona's oversight extends to not properly maintaining the tower per the original CUP, not only failure to renew the original CUP. Dregne asked Haultaufderheide if he agrees that no one from Acciona has determined whether the tower is meeting the conditions in the expired permit; Haultaufderheide stated that is correct.

Dregne reminded the Commission that the forfeiture is a separate issue, but whether the applicant who currently owns the tower is meeting the conditions within the expired permit is a factor in issuing a new CUP.

Francis asked what the value would be of obtaining further information from the tower; Haultaufderheide stated that in the current economy investors want all the information they can have regarding their investments, and they are looking for 3-4 years of data to provide to the investors. Francis asked why the information obtained from the MET tower in Magnolia is not

enough information. Haultaufderheide stated that the information needs to be within a two mile radius of the tower, and the Magnolia tower is 8 miles away from the one on the Maas property.

Lee asked Haultaufderheide if, in the 30 days since the May Plan Commission, any of the issues brought up in May had been addressed. Haultaufderheide has contacted the company that installs the balls on the guy wires and has been in contact with Acciona to get them ordered. It may take 60 to 90 days to get them. Lee would have appreciated something in writing regarding the balls, perhaps a copy of a quote or order from the company to demonstrate that some action had been taken. Zweizig noted that upon the original application for the CUP, the Commission requested that orange balls be installed on the wires and were told that flags were the norm, and then the flags were not maintained.

Gruebling asked if the Town was to receive copies of the data from the tower; that was not a condition of the original permit.

Francis asked what damage has been done by the tower being up? He sees no damage. Lee states that he sees no credibility with the company or the applicant. Maas apologized for the situation but also sees no damage done either. Larsen states the Commission shouldn't treat these applicants any differently than any other permit holder up for renewal, and feels that they should be given the option to come into compliance within a short time period.

Maas asked if the Town has the right to demand a copy of the lease if the company has already accepted responsibility for the tower; Dregne explained that the Commission has the right to request whatever information it needs to determine if the permit request fits within the standards set in the Town's zoning ordinance.

Public hearing closed at 9:50 p.m.

Larsen would like more conditions attached, as he feels there are some serious issues the Commission needs to address. One condition would be the revocation language discussed in the prior CUP discussion. Larsen also believes that the permit needs to include more clearly defined conditions for standards for safety markings, but is unclear who would be responsible for periodically reviewing adherence to the standards. Exum suggested making Acciona responsible for the review; Larsen stated that at this point the company has no credibility with performing prior maintenance tasks and doesn't think that putting that responsibility on them going forward is a good idea. Gruebling suggested having the Town's Building Inspector perform the reviews, with the company covering the costs. Gruebling also expressed concern with future changes in ownership and suggested requesting a bond in case the Town is forced to take ownership of the tower at some point in time. Dregne noted that if the Building Inspector was to perform routine checks of the tower the property owner and lease holder would need to enter into an agreement approved by the Town Attorney allowing representatives of the Town to enter the property. Haultaufderheide stated it would cost approximately \$4,200 to take down the tower presently, and figures \$5,000 would be a reasonable amount to cover future inflation. Suggested maintenance items would be checking to be sure the cable balls were in place and repainting the tower. Possible frequency would be every 6 months, spring and fall.

Exum brought up the issue of limiting the duration of the permit to a specific period of time. If no time period is imposed there is no basis for requiring the applicants to provide a bond to cover removal of the tower.

Motion to table the request made by Donald Maas, 7337 N. Pleasant Prairie Rd, Evansville, WI 53536 for a conditional use permit for a wind measurement tower to be located on parcel #6-20-247, a 40 acre parcel located in the NE ¼, NW ¼ of Section 30, to collect information for wind turbine feasibility in accordance with the Town of Union Zoning Ordinance section 17.03 and have Attorney Dregne draft a conditional use permit addressing issues brought up during tonight's discussion which would be available to Plan Commission for review two weeks prior to the next Plan Commission meeting made by Eric Larsen. Friendly amendment made by Kim Gruebling: to clarify, issues to address in the draft permit include establishing an escrow account, cable balls/tower paint and other routine maintenance, development of an agreement to allow the Town to enter the land to conduct inspections, and that the owner of the tower be responsible for providing the funds for the escrow account and reimbursing the Town for inspection costs. Second by Kim Gruebling.

Motion carried by unanimous voice vote.

It was noted by the Commission that Haultaufderheide is free to develop his own proposal of ways to address the Plan Commission's concerns regarding the tower; they would request such a proposal in writing and prior to the July Plan Commission meeting so they have time to review it.

Public Hearing: Review and recommendation to Board action on request for land division made by Barbara George, 11215 N. Hwy. 14, Brooklyn, WI 53521 to separate off 75.6 acres from the existing 230.1 acre parcel #6-20-8, located in the NW ¼ of section 2. The physical address of the parcel is 14101 N. Dunphy Rd.

To clarify the reason that this land division needed to come before the Plan Commission and Town Board, the Town's zoning ordinance states that the Town must review any land division.

Public hearing opened at 10:15 p.m.

Ryan George was in attendance representing Barb George, the applicant. He will be buying a portion of the farm from his mother. George noted that in his opinion, the application fee of \$750 for a land division and \$500 for conditional use permits doesn't seem appropriate.

Zweizig asked, with regard to the issue of private wastewater treatment, what is the current septic system like on the property? George stated it is a conventional system, not a mound system. George's have owned the property for 16 years, and the system is at least that old. Lee asked for the reason for the dog leg along Dunphy Road; George explained that the existing lot lines run there. The home has been rented out for years, and their current tenant recently moved out and George would like to move in by fall. Their intention is to split off a square section of the farm, which the remaining 153 acre piece would be. The parcel is located in the farmland preservation area, and Larsen stated he would have a hard time approving the request without a deed restriction restricting further development on the remaining 153 acres. Ag preservation would be the basis for the deed restriction decision. Dregne noted that he has only seen deed restrictions used when people have separated off buildings and 3-5 acre parcels off of larger A1 parcels. Pestor doesn't think that a deed restriction is warranted in this situation. Zweizig questioned if a condition could be imposed stating that any future buildings be placed on locations containing highly erodible soil, as a method of preserving the prime farmland.

Supervisor Don Krajeck asked the Commission to consider if the request is consistent with the ordinances currently in place, and base their decision on that. Exum stated they are concerned with maintaining consistency in their practice of requiring deed restrictions. Dregne noted that

the Town's authority in land divisions is narrower when there is no zoning change than when there is; there is no zoning change in this case.

Public hearing closed at 10:49 p.m.

Motion to recommend to the Board approval of the request for land division made by Barbara George, 11215 N. Hwy. 14, Brooklyn, WI 53521 to separate off 75.6 acres from the existing 230.1 acre parcel #6-20-8, located in the NW ¼ of section 2 made by Dave Pestor. Second by Doug Zweizig.

Gruebling asked if further development would be allowed on the 75 acres; it could be further split into two ~35 acre parcels retaining A1 zoning. Friendly amendment made by Kim Gruebling to include the requirement that the 75.6 acre parcel be deed restricted to prevent any further land divisions. Amendment seconded by Renee Exum. It was noted that the legal issues raised by Dregne that apply to the larger parcel would also apply to this parcel. Amendment failed by voice vote.

Roll call vote on original motion: Alvin Francis – abstain; Doug Zweizig – Yes; Eric Larsen – No; Renee Exum – Yes; Dave Pestor – Yes; Kim Gruebling – Yes; Doug Lee - No. Motion carried 4-2.

Public Hearing: Review and recommendation to Board action on request for land division and conditional use permit made by Prairie Homes LLC, 5440 Willow Rd, Ste 101, Waunakee, WI 53597 to separate off home, buildings and 4 acres off the existing 153 acre parcel # 6-20-32 located at 17202 W. Holt Rd. in the SE ¼, NW ¼ of section 5.

Public hearing opened at 10:58 p.m.

Lee noted a 5 acre discrepancy on lot sizes within application; per Nick Ladopolous the difference is in the right of way. Supervisor George Franklin stated he would like the parcel to go to the east of the line fence; this would allow for some pasture if someone bought the buildings and wanted animals. Zweizig stated that the conditional use permit does not allow for more than 5 acres to be divided off, and a change such as Franklin is suggesting would bring the lot size close to 10 acres.

It was clarified that this request does not need Board review/approval.

Ladopolous stated that in his opinion in the future the system of large farming in the US will become unsustainable and small farming will become necessary. He feels the idea of placing a deed restriction on the 153 acre parcel in the prior request was unreasonable, and thinks the Town is overstepping its authority.

Larsen asked why the application is for a CUP instead of a division to an A3 or A2 parcel; Ladopolous stated that it was the Building Inspector's decision, not his.

Exum believes the request meets the conditions of the Town's ordinance section 17.18 (6) (b); Larsen disagrees.

Public hearing closed at 11:21 p.m.

It was noted that in section 17.06 (3) (c), it was unclear what "develop" means, as well as what the statement "complies with the Union Township Development Plan" refers to.

Motion to approve request for land division and conditional use permit made by Prairie Homes LLC, 5440 Willow Rd, Ste 101, Waunakee, WI 53597 to separate off home, buildings and 4 acres off the existing 153 acre parcel # 6-20-32 located at 17202 W. Holt Rd. in the SE ¼, NW ¼ of section 5 made by Eric Larsen. Second by Dave Pestor.

Gruebling stated he cannot support the request without a deed restriction on the remaining 149 acre parcel; Larsen agrees, but can't find a basis for denying the request in the ordinance.

Roll call vote: Alvin Francis – Yes; Doug Zweizig – Yes; Eric Larsen – Yes; Renee Exum – No; Dave Pestor – Yes; Kim Gruebling – No; Doug Lee – No. Motion carried 4-3.

Review and possible recommendation to Town Board changes to ordinances including citation ordinance and related fee schedules.

Tom Alisankus distributed a bond/deposit schedule and citation ordinance draft. He suggested first violations \$114, second and subsequent violations \$303. The amounts apply to all ordinances, and the advantage to this approach is that it is easy for those who are enforcing the ordinances. Alisankus noted that deposits and bonds are not meant to be punitive. Court will still have authority to impose final penalty depending upon circumstances of case; \$114 and \$303 are only the deposit amounts. The penalty range for the ordinances would be what the court would use for penalty amount.

Dregne noted that the draft citation ordinance references the “code,” but the Town’s ordinances have not yet been codified.

Motion to adjourn made by Doug Lee, second by Kim Gruebling. Meeting adjourned at 11:40 p.m.

Respectfully submitted by Clerk Regina Ylvisaker.

Note: minutes are considered draft until reviewed and approved by the Plan Commission at a properly noticed meeting.